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CALIFORNIA HOUSING FINANCE AGENCY )  
Office of General Counsel )  
P.O. Box 4034 )  
Sacramento, CA 95812-4034 )

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**CALIFORNIA HOUSING FINANCE AGENCY**

**REGULATORY AGREEMENT**

**CalHFA Development No. \_\_\_\_\_**

This Regulatory Agreement (the “**Agreement**”), dated as of \_\_\_\_\_, 20\_\_ for informational purposes, is made and entered into by and between \_\_\_\_\_, a California \_\_\_\_\_ (the “**Borrower**”), and the California Housing Finance Agency (the “**Agency**”), a public instrumentality and political subdivision of the State of California created by the Zenovich-Moscone-Chacon Housing and Home Finance Act (the “**Act**”), Division 31 of the California Health and Safety Code.

**RECITALS**

A. The Borrower is the owner of the real property described in **Exhibit A** attached hereto and incorporated herein by this reference (the “**Property**”), and has applied to the Agency for a loan (the “**Loan**”) to finance a multifamily rental housing development (the “**Development**”) pursuant to the provisions of the Act, particularly those provisions contained in Chapter 6.7 of the Act (the “**Law**”). The Development includes the Property, all improvements constructed on the Property and all funds or property, of whatsoever kind or nature, committed to the Development.

B. The Agency has issued tax-exempt bonds (“**Bonds**”) pursuant to the Code and the Act to provide the financing for the Development.

C. In order to assure the Agency and its bondholders that interest on the bonds sold to finance the Loan (the “**Bonds**”) will be excluded from gross income for federal income tax purposes under Section 103(a) of the Internal Revenue Code of 1986, as amended (the “**Code**”), and that the Bonds are “qualified bonds” within the meaning of Section 141 of the Code, and to be in compliance with the Code, and to satisfy the public purposes for which the Bonds are authorized to be issued under the Code, certain limits on the use and occupancy of the Development and certain other requirements need to be established.

D. As an inducement to the Agency to make the Loan, the Borrower has agreed to enter into this Agreement and has consented thereby to be and to have the Development regulated and restricted by the

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Agency as provided herein and in the Act and in the rules, regulations, policies and procedures of the Agency promulgated thereunder, and as amended from time to time.

NOW, THEREFORE, the parties hereto agree as follows:

1. **Term of Agreement.** This Agreement shall be effective as of the Closing Date and shall remain in full force and effect and shall apply to the Development until the latest of (i) the end of the Qualified Project Period, as defined below, (ii) payment in full of the Loan, or (iii) \_\_\_\_\_ (\_\_\_\_) years.

2. **Definitions.** In addition to the terms defined elsewhere in this Agreement, the following terms shall have the following meanings:

(a) ***“Closing Date”*** means the date on which the Note is delivered to or for the account of the Agency, and the Deed of Trust and this Agreement recorded in the official records of the County in which the Development is located.

(b) ***“Deed of Trust”*** means that certain deed of trust entitled “California Housing Finance Agency [Construction] [Permanent] Deed of Trust with Assignment of Rents, Security Agreement and Fixture Filing, CalHFA Development No. \_\_\_\_\_” which was executed by the Borrower, secures the Note and this Agreement, and encumbers the Development. The term “Deed of Trust” may also include any other deed(s) of trust recorded against the Development which provide a security interest in such Development for the benefit of the Agency. It is intended that this Agreement shall be recorded ahead of and have priority over the Deed of Trust.

(c) ***“Distribution”*** means any withdrawal, taking or payment of any assets, earnings or income of the Development excluding payments for current Operating Expenses of the Development and repayment of Operating Expense Loans.

(d) ***“Gross Income”*** means all rents, charges, fees and any other income of the Development, and without limitation, such income derived from commercial facilities of the Development, if any, which may include but not necessarily be limited to, laundry, parking, vending, forfeited deposits and payoff fees.

(e) ***“Loan”*** means the Agency's loan or loans to the Borrower as evidenced by the Note.

(f) ***“Loan Documents”*** means this Agreement, the Note and Deed of Trust, as defined herein, [the Construction and Term Loan Agreement between the Borrower and the Agency] and any other document evidencing or securing the Loan.

(g) ***“Note”*** means that certain promissory note or notes entitled “California Housing Finance Agency, Promissory Note, CalHFA Development No. \_\_\_\_\_” of the Borrower in the amount of \_\_\_\_\_ (\$\_\_\_\_\_), and

(h) ***“Operating Expense”*** means all reasonable and proper expenses of the operation of the Development, including, but not limited to insurance, real estate taxes, ordinary maintenance and repair, costs of marketing, Development management fees, fuel, utilities, garbage disposal, sewer charges, audit expenses, all sums due or currently required to be paid under the terms of the Note or Deed of Trust, Agency required impound, reserve and escrow deposits, reasonable attorneys fees incurred in actions to terminate tenancies, and such other payments as the Agency may require or specifically approve in writing as Operating Expenses. In no event shall attorney fees or litigation costs other than as stated, nor expenditures normally required to be paid out of the Replacement Reserve, be treated as Operating Expenses unless specifically

approved in writing by the Agency. Nonrecurring expenses in excess of Five Thousand and No/100 Dollars (\$5,000.00) shall not be considered an approved Operating Expense unless specifically approved in writing by the Agency, which such approval shall not be unreasonably withheld.

(i) “**Operating Expense Loan**” means any loan by the Borrower or partner of the Borrower for the purpose of paying Operating Expenses of the Development. Operating Expense Loans may be repaid only with the approval of the Agency, which such approval shall not be unreasonably withheld and only after payment of, or the reservation of funds for payment of, all Operating Expenses of the Development, including payments due under the Agency's Residual Receipts Loan, if applicable.

(j) “**Qualified Project Period**” means a period beginning on the later of the date of this Agreement or the first day on which ten percent (10%) of the units in the Development are occupied, and ending on the latest of (i) the date which is fifteen (15) years after the later of the date of this Agreement or the first date thereafter on which fifty percent (50%) of the units in the Development are first occupied, (ii) the date on which no tax-exempt "private activity bond," within the meaning of Section 141 of the Code, issued with respect to the Development is outstanding, or (iii) the date on which any assistance provided with respect to the Development under Section 8 of the United States Housing Act of 1937, as amended, terminates.

(k) “**Qualified Tenants**” means those tenants with special rights to occupy dwelling units in the Development as defined in Section 4(a) of this Agreement.

(l) “**Residual Receipts**” means that portion of Surplus Cash remaining at the end of the fiscal year after payment to the Borrower of Agency-approved Distribution.

(m) “**Surplus Cash**” means the balance of Gross Income of the Development remaining at the end of each fiscal year after payment of Operating Expenses, Agency-approved Operating Expense Loans, and reservation of cash required to meet current thirty (30) day obligations. For the purpose of computing Surplus Cash, Gross Income of the Development shall include any rent insurance proceeds, but shall exclude fire or other insurance proceeds, condemnation proceeds, and any security deposit which shall not have become the property of the Borrower free of the claim of any person claiming as or through the tenant having made such deposit.

(n) “**Sustaining Occupancy**” is deemed to have been achieved when, for at least three (3) consecutive months, (i) at least ninety-five percent (95%) of the total number of units are occupied, and (ii) Gross Income equals or exceeds that projected on the mortgage application approved at final commitment.

3. **Maintenance as Residential Rental Property.** The Borrower shall not take any action, or permit any action to be taken, which would result in the Development not being, or (except as expressly approved in writing by the Agency) in any proceeds of the Loan being used to provide other than “residential rental property” within the meaning of Section 142(d) of the Code. To that end, the Borrower represents, warrants and agrees that:

(a) The Development is comprised of at least two dwelling units and facilities functionally related and subordinate to the dwelling units. The portion of the Development that constitutes residential rental property shall be determined in accordance with Treasury Regulation Section 1.103-8(b)(4) and shall consist of the residential units in the Development, all other property of the Development benefiting only such units and the allocable portion of the Property of the Development benefiting both such units and other portions of the Development, as provided by the Treasury Regulations.

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(b) Each of the dwelling units in the Development shall be similarly constructed, and shall contain complete, separate and distinct facilities for living, sleeping, eating, cooking and sanitation for a single person or a family.

(c) Each of the dwelling units in the Development shall be available for rental to members of the general public. None of the dwelling units in the Development shall at any time be utilized on a transient basis, shall ever be leased or rented for a period of less than thirty (30) days, or shall ever be used other than for housing purposes. The Development shall not be used as a hotel, motel, dormitory, fraternity or sorority house, rooming house, hospital, nursing home, sanitarium, rest home, or trailer park or court for use on a transient basis.

(d) The Development consists of a parcel or parcels that are contiguous except for the interposition of a road, street or stream, and all of the Development's facilities comprise a single geographically and functionally integrated project for residential rental property, as evidenced by the common ownership, management, accounting and operation of the Development.

(e) The Borrower shall not convert the Development to condominium or other individual unit ownership during the term of this Agreement. No part of the Development shall at any time be owned or used by a cooperative housing corporation except in compliance with the provisions of Section 143(k)(9) of the Code.

(f) If the Development comprises fewer than five (5) dwelling units, the Borrower shall not occupy any dwelling unit in the Development.

(g) All of the amounts advanced for the Development from the proceeds of the Loan shall be used to provide amounts paid or incurred on or after \_\_\_\_\_ (sixty (60) days prior to the Agency's declaration of official intent to issue bonds) which are chargeable to the residential rental portion of the Development's capital account or would be so chargeable either with a proper election by the Borrower (for example under Section 266 of the Code) or but for a proper election by the Borrower to deduct such amounts. If any portion of a Development was acquired from or constructed by a Related Person of the respective Borrower (whether as a general contractor or a subcontractor), such costs include only the actual out-of-pocket costs incurred by such Related Person and not, for example, intercompany profits resulting from members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the construction of such Development or payments received by such Related Person due to early completion of the Development (or any portion thereof). No proceeds of the Bonds will be spent on (1) leasing commissions, costs of advertising for any Development, or other costs related to the rental of units in any Development, (2) management fees for the management and operation of any Development after the completion date, or (3) interest allocable to any unit for any period after such unit is held available for rental. For purposes of this paragraph, "Related Person" shall mean a person with a relationship to a person such that (i) the relationship between such persons would result in a disallowance of losses under Section 267 or 707(b) of the Code or (ii) such persons are members of the same controlled group of corporations (as defined in Section 1563(a) of the Code, except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein.

(h) On the basis of the cost and economic life of each asset of the Development (under midpoint lives under the ADR System or guideline lives under Treasury Revenue Procedure 62-21, as the case may be), the weighted average estimated economic life of the Development exceeds the maturity of the Loan.

(i) No more than twenty-four and nine-tenths percent (24.9%) of the proceeds of any Loan may be used (directly or indirectly) for the acquisition of land (or an interest therein). The Borrower

shall expend Loan proceeds for eligible costs in such amount as may be necessary to comply with the preceding sentence.

(j) The Borrower shall submit to the Secretary of the Treasury (at such time and in such manner as the Secretary shall prescribe) an annual certification as to whether the Development continues to meet the requirements of Section 142(d) of the Code.

(k) If loan proceeds are to be used for acquisition of an existing Development, an amount equal to at least fifteen percent (15%) of the acquisition cost of the Development shall be attributable to rehabilitation expenditures (as that term is defined in Section 147(d)(3) of the Code) which occurred within twenty-four (24) months after the later of the issuance of the bonds or the date the Development was acquired.

(l) If loan proceeds originally used to finance the Development are from qualified 501(c)(3) bonds, subsections (i) and (k) above are inapplicable, and the Borrower certifies the following:

(i) it has received an IRS determination that it qualifies as a 501(c)(3) corporation;

(ii) it will own and operate the Development in furtherance of its charitable purposes (as described in its application to the IRS for its 501(c)(3) determination) and not for pecuniary benefit;

(iii) the ownership and operation of the Development does not and will not in any respect or to any extent constitute an unrelated trade or business under Section 513(a) of the Code; and

(iv) it will maintain its existence as, and conduct its operations so as, to maintain qualification as an organization described in Section 501(c)(3) of the Code for the term of the Loan.

#### 4. Tenant Income Limitations.

(a) For the term of this Agreement, at least twenty percent (20%) of the completed dwelling units in the Development shall be occupied or reserved for occupancy, on a continuous basis by individuals or families whose income does not exceed fifty percent (50%) of area median income, as adjusted for family size pursuant to Section 142(d) of the Code, and who constitute very low income households within the meaning of Section 51335 of the Law (collectively “***Qualified Tenants***”). In no event shall the occupants of a unit be considered to be Qualified Tenants if all such occupants are students (as defined under Section 151(e)(4) of the Internal Revenue Code of 1954, as amended), no one of whom is entitled to file a federal joint return under the Code. Units so occupied shall be rented at rents (including an allowance for utilities) which shall not exceed one-twelfth (1/12th) of thirty percent (30%) of fifty percent (50%) of area median income with adjustments for household size. The Agency shall from time to time make available to the Borrower schedules of and any changes in the dollar amounts of the rent and income limitations contained in this Section 4.

Except as provided in Subsection 4(b) below, a dwelling unit occupied by an individual or family who at the commencement of the occupancy qualifies as a Qualified Tenant shall be treated as occupied by a Qualified Tenant, even if such individual or family during their tenancy in such unit ceases to so qualify. Moreover, if vacated, such unit shall be treated as occupied by a Qualified Tenant until reoccupied, other than for a temporary period, at which time the character of the unit shall be redetermined. In no event shall such temporary period exceed thirty-one (31) days.

(b) No resident of a dwelling unit in the Development shall be denied continued occupancy because, after admission, the resident's family income increases (or family size decreases) so as to cause the family income to exceed the maximum income level for a Qualified Tenant. However, if a resident's family income increases (or family size decreases) so as to cause the family income to exceed one hundred forty percent (140%) of the applicable income limit, the Borrower shall ensure that the percentage requirements of this Section shall continue to be met by providing the next available unit or units to Qualified Tenants or by taking other actions to satisfy the percentage requirements of this Section. In determining whether such percentage requirements have been achieved, such requirements shall be complied with on June 30 of each year after any dwelling units in the Development are occupied.

(c) On a form approved by the Agency, the Borrower shall obtain a third party certification of income from each prospective tenant of a dwelling unit designated for rental by a Qualified Tenant prior to admission to the Development. An annual certification shall also be obtained from each tenant of a dwelling unit designated for rental by a Qualified Tenant on or about June 30 of each year. Copies of such certifications shall be sent to the Agency, shall be retained in the Borrower's files for a period of three (3) years and shall be available for inspection by the Agency or its agents upon request.

(d) On or before August 15th of each year the Borrower shall file with the Agency a report on a form approved by the Agency specifying the total number of dwelling units in the Development and the number of units occupied by Qualified Tenants as of June 30th of such year.

5. Agency Financing and Rental Requirements. In addition to the requirements of Sections 3 and 4, the Borrower covenants that:

(a) Unless otherwise approved by the Agency, rental charges to Qualified Tenants shall include all utilities except telephone and cable television; provided however, that where the Agency approves direct payment of utilities (in addition to telephone) by such tenants, such rental charges shall be calculated as if the estimated expense of such utilities were to be paid by the Borrower, but the amounts actually collected from such tenants shall be decreased by the estimated expense of such utilities approved by the Agency.

(b) The Borrower shall require every tenant in the Development to execute a lease in a form which may be subject to approval by the Agency and shall not lease any dwelling unit in the Development for less than thirty (30) days nor more than two (2) years. The form of lease shall provide for eviction procedures conforming to California law.

(c) The Borrower shall not discriminate against tenants or applicants who are recipients of federal rent subsidies pursuant to Section 8 of the United States Housing Act of 1937, as amended, or any successor subsidy program.

(d) Utilization of the commercial facilities of the Development, if any, shall be compatible with the residential uses of the Development. Any commercial tenants, improvements and lease provisions must be approved by the Agency. All commercial leases shall include provisions to the effect that in the event of the foreclosure of the Loan, the Agency shall have the option of either continuing in effect or terminating the commercial lease. The Borrower and each commercial tenant agree to do any acts and execute any documents necessary to effectuate the Agency's rights in this regard.

(e) The Borrower agrees to make available any and all units of the Development for the purposes of physical inspection by Agency personnel upon prior notice and in accordance with Agency policies and procedures. In addition, Borrower shall require that its managing agent inspect each unit at least on an annual basis.

(f) The Borrower shall not permit any interest to be charged nor to accrue on any advances to the Development from the Borrower or any partner of the Borrower except upon the following conditions: (1) prior written notice of such advance and the terms thereof shall be given to the Agency; (2) interest shall be limited to the rate on the Note; (3) the amount of such advance shall be no greater than necessary to pay current expenses; and (4) such advances shall be repaid after payment of, or the reservation of funds for payment of, all Operating Expenses of the Development and prior to any Distributions from the Development. Failure of any of these conditions shall render the party making the advance liable to refund and/or forfeit all interest paid or due and shall be an event of default pursuant to this Agreement.

(g) The dwelling units to be occupied by, or reserved for occupancy by, Qualified Tenants shall be of comparable quality to all other dwelling units, shall be dispersed throughout the Development, and shall be in size and type available in the same percentages as the sizes and types of all other dwelling units.

(h) The Borrower represents and warrants that at all times its acts in connection with the Development have complied with and shall continue to comply with all applicable provisions of federal, state and local laws, all applicable provisions of the Act, the rules, regulations, policies and procedures of the Agency and all agreements with the Agency and any other public entities concerning the Development as amended from time to time. The Borrower represents to the Agency that professional advice is available to the Borrower for the purpose of enabling the Borrower to be aware of and to comply with said laws, policies, procedures and agreements. The Borrower agrees to indemnify the Agency against any loss incurred by the Agency as a result of the Borrower's failure to comply therewith.

Specifically, the Borrower acknowledges the existence of federal, state and local laws regarding handicapped accessibility and the relocation of persons displaced by the Development. The Borrower agrees that the Borrower, and not the Agency, is responsible for complying with such laws.

**-----> [INSERT WHEN APPLICABLE]**

(i) Throughout the term of this Agreement, the Borrower shall seek, and if offered, accept or renew, all Section 8 Housing Assistance Payment Contracts, vouchers or equivalent, based on subsidies at rent levels equal to, or higher than those existing at the Closing Date. All payments to Borrower pursuant to any such contract or contracts are hereby assigned to the Agency for the duration of this Agreement. Borrower hereby grants to the Agency a security interest in all such payments.

6. Establishment and Use of Reserve Funds. The Borrower shall establish and maintain the following reserve and escrow accounts. Unless otherwise specified herein or approved by the Agency, in its sole discretion, such accounts (i) shall be established on or before the Closing Date, (ii) shall be funded with cash, (iii) shall be under the control of the Agency at all times, (iv) may be invested by the Agency provided that income earned on such funds (minus 1% per annum of the principal balance of the account, but only to the extent there are earnings, which shall be retained by the Agency as an administrative fee) shall accrue to the account, (v) shall be used for the prescribed purposes, and (vi) shall have any remaining balance, upon the Agency's termination of the requirement for the particular reserve account, returned to the Borrower. Borrower agrees that the Agency is granted a security interest in all required reserve and escrow funds, which are intended to benefit the Development. Borrower agrees that the Agency is granted a security interest in all required reserve and escrow funds, which are intended to benefit the Development. Borrower agrees that any conveyance or transfer, voluntary or involuntary, of its interest in the Development shall have the effect of transferring to the successor-in-interest all of Borrower's interest in and all of its rights to, if any, the reserve and escrow funds without further act of the Borrower, and in refunding all or any part of the reserve and escrow funds, the Agency may deal with whoever is the record owner of the property.

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(a) Marketing Account. A Marketing Account (the “**MA**”) shall be established in the amount of \_\_\_\_\_ (\$\_\_\_\_\_) and maintained until all expenses for which the account was designed to secure have been paid. The MA shall be used to pay for nonconstruction items necessary to make the Development operational, such as advertising expenses, office expenses, marketing staff payroll, model apartment and common area furniture, maintenance tools and equipment, first-year hazard insurance premiums and estimated property tax impound adjustments.

(b) Rent-Up Account. A Rent-Up Account (the “**RUA**”) shall be established in the amount of \_\_\_\_\_ (\$\_\_\_\_\_) and maintained until Sustaining Occupancy is achieved. The RUA shall be used to fund any shortfall in rental income occurring between initial occupancy and Sustaining Occupancy.

(c) Operating Expense Reserve. An Operating Expense Reserve (the “**OER**”) shall be established and maintained from sources other than Gross Income in the amount of \_\_\_\_\_ (\$\_\_\_\_\_), until such time as \_\_\_\_ (\_\_\_\_) full consecutive Development fiscal years have passed in which the audited annual financial statement accepted by the Agency shows that Gross Income is sufficient to meet all Operating Expenses. The OER shall be funded on a one-time-only basis and, if drawn down, need not be replenished. The OER shall be used to fund any Operating Expenses not covered by Gross Income, the MA, or the RUA.

(d) Replacement Reserve. A Replacement Reserve (the “**RR**”) shall be established and maintained until the termination of this Agreement. The RR shall be funded by deposits in the amount of \_\_\_\_\_ (\$\_\_\_\_\_) per month, due on the first day of each and every month commencing with the first payment due on the Note. The Agency may adjust, at any time, the amount of the monthly payments to be made into the RR as necessary to, in its sole discretion, keep pace with increases in the costs of replacing structural elements and equipment of the Development. The RR shall be used upon the Agency's written approval to replace major structural elements or equipment of the Development or for any other purpose consistent with maintaining the financial and physical integrity of the Development. Borrower agrees to make arrangements for a physical needs assessment and an evaluation, by an independent party acceptable to the Agency of current and future maintenance requirements of the Development. This physical needs assessment and maintenance evaluation shall occur upon the Agency's request, shall be forwarded to the Agency for review, and shall be performed at least every five (5) years. The costs of such assessment and evaluation shall be an obligation of the Borrower.

(e) Construction Defect Security. On or before the Closing Date, the Agency shall be provided with a cash deposit or letter of credit, as approved by the Agency (the “**Construction Defect Security**” or “**CDS**”), in the amount of \_\_\_\_\_ (\$\_\_\_\_\_) (2.5% of the construction contract amount as of the date of completion) or such greater amount as may, in the sole discretion of the Agency, be necessary to adequately secure the Agency and Development against construction defects. The term “construction defect” as used herein shall mean all construction related physical problems including but not limited to deviations from the approved final plans and specifications for the Development. Such CDS shall be kept in effect until \_\_\_\_\_ and may be used or set aside for the correction of construction defects or related damages which appear during such period and which are not corrected by the contractor or the Borrower within a reasonable time following the demand by the Agency for such correction.

(f) Additional Escrows and Accounts. In addition to the MA, RUA, OER, RR, and CDS, the Agency may, prior to the Closing Date, require the establishment and maintenance of other reserve and/or escrow accounts as necessary to create reserves which, in the sole discretion of the Agency, are necessary or proper to ensure the feasibility of the Development.



7. Application of Funds if Default. In the event of a default under this Agreement, or any of the other Loan Documents, the Agency in its sole discretion may apply or authorize the application of the funds in any of the accounts provided for in Section 6, to any amounts then due under this Agreement or the other Loan Documents, or use such funds for the continued operation of the Development provided, however, that if the default is cured, all funds shall be returned to the appropriate account.

8. Non-Discrimination and Equal Opportunity. The Borrower shall not unlawfully discriminate with respect to occupancy of the Development because of a person's race, sex, sexual orientation, marital status, familial status, age (except for senior citizen housing pursuant to California and federal law), color, religion, disability, source of income, national origin, ancestry, or any other characteristic listed or defined in Section 12955 of the California Government Code or Section 51 of the California Civil Code as such section applies to housing accommodations, or any other basis prohibited by applicable state or federal law. The Borrower shall require that its officers, agents, employees, management agent, contractors, subcontractors, and employees associated with the Development provide equal opportunity for employment and that they shall not engage in any unlawful discriminatory conduct. In addition, the Borrower agrees to conduct its own affirmative marketing programs as approved by the Agency.

9. Qualified Tenant's Rental Limits Increase Procedure.

(a) The Agency will, from time to time, revise the maximum rental limits applicable to dwelling units reserved for Qualified Tenants by a percentage equal to any percentage change in county median income. Until such time as the Agency mails a notice of such change of rent limits to the Borrower, the previously existing charges shall apply.

(b) Upon receipt of new rental limit schedules, the Borrower may increase, and shall, if necessary, decrease the rental charges. Any increase in rental charges must comply with the terms of the lease as to the time and manner of such changes, provided that, no Qualified Tenant shall have a rent increase sooner than one (1) year after initial occupancy, and provided further, no Qualified Tenant shall have an annual rent increase in excess of the percentage increase in the county median income for the applicable year in which the rent increase is being considered, nor shall there be an accumulation of rental increases from year-to-year for those years in which the Borrower chooses not to increase rents by the percentage allowed herein.

10. Financial Covenants. In addition to, but not by way of limitation of, all other duties of the Borrower set forth herein, the Borrower shall comply with the following:

(a) Audit. The Development and all equipment, buildings, plans, offices, apparatus, devices, books, contracts, records, documents and any other papers relating thereto shall at all times be maintained in reasonable condition for proper audit and shall be subject to examination, inspection and copying at any reasonable time by the Agency or by its authorized representative upon reasonable notice to Borrower.

(b) Books and Records. The books and records of the Development shall be kept by the Borrower in accordance with the requirements of the Agency.

(c) Financial Reporting.

(i) Within sixty (60) days following the end of each fiscal year of the Development, the Agency shall be furnished by the Borrower with a complete annual financial report on the Development based upon an examination of the books and records of the Development, prepared in accordance with the requirements of the Agency, and certified by the Borrower, and at the Borrower's expense, by an independent certified public accountant licensed in California and acceptable to the Agency. Each such financial report shall be subject to the approval of the Agency and when approved by the Agency shall be a "Development Financial Report" as referred to herein;

(ii) Within twenty (20) days following the end of each month, the Agency shall be furnished by the Borrower with a complete monthly financial report. The monthly financial report must include a detailed accounting of, without limitation, all income and expenses, accounts receivable, accounts payable and disbursements received or made in the month reported.

(d) Furnishing Information. At the request of the Agency, the Borrower shall furnish such reports, financial statements, projections and analyses as may be required from time to time by the Agency and shall give specific answers to questions upon which information is desired relative to the income, expenses, assets, liabilities, contracts, operations and conditions of the Borrower and the Development. Borrower understands and agrees that the content of such reports, statements, projections, analyses and other information may be disclosed in any documentation prepared in connection with the issuance by the Agency of its Bonds.

(e) Development Account.

(1) The Borrower shall establish an account (the "***Development Account***") with a depository, which is insured by the Federal Deposit Insurance Corporation ("***FDIC***") or by a successor in interest to FDIC into which all Gross Income of the Development shall be deposited when received. Immediately upon establishing the Development Account, Borrower shall notify the Agency of the identity of the depository, the branch where the account is established and the account number. Unless the Agency provides a written waiver to Borrower, the depository shall be required to execute a control agreement within the meaning of Article 9 of the California Uniform Commercial Code ("***Control Agreement***"), in a form acceptable to the Agency, to perfect the Agency's security interest in such account. The Borrower or any person receiving funds, including deposits of reserves as set out herein, of the Development other than as permitted by this Agreement shall immediately deposit such funds in the Development Account and failing to do so shall hold such funds in trust for the Development. The Borrower or any person receiving any property of the Development in violation of this Agreement shall immediately deliver such property to the Agency, and failing to do so shall hold such property in trust for the Development. Reserves, deposits, rents, charges, fees and any other deposits and/or income of the Development as used herein shall also include, without limitation, such income derived from commercial facilities of the Development, if any. Agency shall be entitled to exercise its rights under the Control Agreement upon Borrower's default, as determined by the Agency in its sole discretion, under the Loan Documents. However, the Agency shall not be obligated to give the Borrower the advance notice of default required by Section 16 of this Agreement prior to giving the depository the written "Notice of Exclusive Control" provided for in the Control Agreement.

(2) Borrower may not transfer the Development Account to another depository without the written consent of the Agency, which consent, if granted in the agency's sole discretion, shall be conditioned upon the new depository executing a Control Agreement.

(3) Disbursements from the Development Account shall be permitted only to administer security deposits and to pay Operating Expenses and permitted Distributions.

(4) The Borrower shall maintain security deposits in accordance with applicable law.

(f) Annual Operating Budget. The Borrower shall submit to the Agency a proposed operating budget for the Development not later than sixty (60) days prior to the beginning of each fiscal year of the Development. The proposed operating budget shall set forth the anticipated Gross Income of the Development and a detailed estimate of all Operating Expenses thereof, which shall include an itemization of administration expenses, maintenance expenses, cost of utilities, hazard insurance, earthquake insurance, taxes and assessments, Loan principal and interest, deposits to all funds, reserves or accounts required by the Agency and/or established by the Borrower. The budget shall be in a form satisfactory to the Agency and shall otherwise be consistent with the requirements of this Agreement. Upon approval by the Agency, such proposed operating budget shall be the operating budget for the ensuing fiscal year.

11. Development Management.

(a) The Borrower shall provide for the management of the Development in a manner satisfactory to the Agency, shall employ a bonded and licensed management agent, develop a management plan, and use a management agreement acceptable to the Agency. A fidelity bond shall be maintained in an amount equal to one month's gross rent and shall insure the Borrower and the Agency against misapplication of Development Funds. **All management agreements shall include a copy of this Agreement, which shall be incorporated therein, and made a part of the contract.** The management agreement shall be structured so that it is subject to termination with or without cause by the Borrower or the Agency, and without penalty, upon not less than thirty (30) days prior written notice to the management agent. Any liability associated with the termination of the management contract shall be the sole obligation of the Borrower. Upon notice of termination, the Borrower agrees to make immediate alternative arrangements, satisfactory to the Agency, for the continued management of the Development. In the event that the Borrower shall fail to make such alternative arrangements for a substitute managing agent within a reasonable time (which in no event shall exceed sixty (60) days from the date of the sending of the termination notice), the Agency shall have the unilateral right to make such alternative arrangements. The amount of the management agent's compensation shall be subject to approval by the Agency, which shall not be unreasonably withheld.

(b) The Borrower shall require that a Resident Selection/Affirmative Fair Housing Marketing Plan ("Plan") be prepared and maintained in cooperation with the managing agent. This Plan shall be subject to the approval of the Agency. In carrying out this Plan, the Borrower/management agent shall:

(1) Lease no less than twenty percent (20%) of the total units of all sizes and types to Qualified Tenants;

(2) Give preference to the applicants in the following order:

(i) persons displaced by:

a. natural disaster,

b. construction of this Development,

c. other public action,

d. other causes, provided that such displacement shall be certified in writing by a government agency, and

(ii) all other applicants;

(3) Begin marketing of the Development at least ninety (90) days prior to the availability of the units for occupancy;

(4) Assure that all advertising, (including letterheads, brochures and media advertising, shall include “Equal Housing Opportunity” and the “handicapped” logo. Further, if advertisements contain human models, a mix of minority and non-minority models are to be used to reflect the open housing philosophy. No preference for any economic status or lifestyle shall be depicted;

(5) Where a significant number of persons in the community have limited fluency in the English language, provide publications, information, brochures and leases in the native language of such persons; “Significant number of persons” is deemed to be at least twenty-five percent (25%);

(6) Develop and maintain a policy and procedure for the selection and rejection of applicants, and a grievance and eviction policy and procedure for tenants of the Development;

(7) Assure that tenant selection is carried out without favoritism or partiality and that no preference is given to any applicant other than as provided herein;

(8) Give each tenant selected, at the time of acceptance, a written copy of the tenant eviction and grievance procedures for the Development and all amendments thereto; and

(9) Where necessary, conduct such additional marketing as reasonably required to fulfill affirmative marketing goals and meet other goals of the Plan.

12. Certain Acts Prohibited. The Borrower shall not, without the prior written approval of the Agency, do any of the following. The granting of the Agency's approval shall be in its sole, unfettered discretion and may be conditioned upon the satisfaction of such terms and conditions as the Agency may prescribe.

(a) Make any sale, assignment, conveyance or transfer in any other form of the Development or any part thereof or of any of its interest therein, whether voluntarily or involuntarily, or by operation of law.

(i) A transfer by the Borrower in whole or in part, or a transfer by a party having a substantial interest in said Borrower, or transfers by more than one party of interests aggregating a substantial interest in said Borrower, or any other similarly significant change in the ownership of interests in the Borrower, or in the relative distribution thereof, or with respect to the parties in control of the Borrower or the degree thereof, by any other method or means (e.g., increased capitalization, merger with another corporation or other entity, corporate or other amendments, issuance of new or additional ownership interests or classification of ownership interests or otherwise) shall be deemed an assignment, conveyance, or transfer for purposes of this subsection. An assignment by the Borrower to a limited partnership, in which no limited partner has a twenty-five percent (25%) or more interest and of which the Borrower is the sole general partner, shall not be considered an assignment, conveyance, or transfer.

(ii) The term “substantial interest” means the interest of any general partner, any limited partner having a 25 percent or more interest in the organization, any corporate officer or director, and any stockholder having a 10 percent or more interest in the organization.

(iii) \*\*\* [if applicable] As to [Tax Credit Limited Partner], Agency consent is not required for any transfer, in whole or in part, of its interest in Borrower, to an Affiliated Entity, provided that the transfer does not require the consent of the General Partners of Borrower pursuant to section \_\_\_\_\_ of Amended and Restated Limited Partnership Agreement of \_\_\_\_\_ Limited Partnership (the “**Partnership Agreement**”) (capitalized terms in this section 12(a)(iii) not defined elsewhere in this Agreement are defined the Partnership Agreement).

(iii) As to Borrower’s Tax Credit Limited Partner (and its Administrative Limited Partner, if applicable), Agency consent is not required for any transfer, in whole or in part, until three (3) years following Permanent Loan Closing Date/conversion, of its interest in Borrower, to an Affiliated Entity, provided that the transfer does not require the consent of the General Partners of Borrower pursuant to the terms of Amended and Restated Limited Partnership Agreement of Borrower (the “**Partnership Agreement**”) (capitalized terms in this section 12(a)(iii) not defined elsewhere in this Agreement are defined in the Partnership Agreement) or affect the tax-exempt status of the Bonds. Borrower shall promptly provide agency a copy of all amendments to the Partnership Agreement, along with any other pertinent information related to the transfer. If the project receives federal assistance, including but not limited to FHA Risk Share Insurance, Borrower shall comply with all applicable HUD rules related to previous participation clearances prior to any transfer. Borrower must give Agency a reasonable notice of the transfer. After Tax Credit Limited Partner has paid its capital contribution in full to Borrower, Tax Credit Limited Partner may transfer all or part of its interest in Borrower to one or more transferees other than an Affiliated Entity with Agency’s prior written consent, which Agency agrees it will not unreasonably withhold. In addition, at any time after Tax Credit Limited Partner has paid its capital contribution in full to Borrower, if the General Partner materially breaches the Partnership Agreement, Borrower’s limited partner or partners may remove the General Partner in accordance with the terms of the Partnership Agreement and, with the Agency’s prior written consent, which Agency agrees it will not unreasonably withhold, appoint a new general partner. For this purpose, an “Affiliated Entity” is an entity that controls, is controlled by or is under common control with Tax Credit Limited Partner.

- (b) Make any Distribution not permitted by the terms of this Agreement,
- (c) Assign or transfer any right to manage the Development.
- (d) Materially remodel, add to, reconstruct, demolish or damage any part of the Development.
- (e) Require, as a condition of the occupancy or leasing of any dwelling unit in the Development to Qualified Tenant, any consideration or deposit other than the prepayment of the first month’s rent plus a security deposit in an amount not in excess of one (1) month’s rent to guarantee the performance of the covenants of the lease.
- (f) Incur any liability or obligation in connection with the Development, contingent or otherwise, other than for current Operating Expenses and for the indebtedness evidenced by the Note, or incur any liability or obligation whatsoever that is secured in whole or in part by any interest in or lien or encumbrance on the Development.

- (g) Invest any funds from the Development in any property, real, personal, or mixed, except as authorized by this Agreement, or deposited any such funds in a depository not authorized by this Agreement; or
- (h) Make a loan of any funds from the Development to any person or entity; or
- (i) Fail to establish or maintain the accounts required by Section 6 of this Agreement.
- (j) Cause or permit the Development to be maintained in a condition which the Agency deems, in its sole discretion, as an impairment of its security interest, or a violation of the Borrower's obligation to maintain the Development in a safe, sanitary and decent condition.

13. Distributions.

(a) Subject to receipt of Agency's prior written consent or approval, the Borrower shall be entitled to an annual Distribution of Surplus Cash. The Agency shall make an annual review of the Development Financial Report which shall be prepared in accordance with the Agency's Property Management Manual as amended from time to time, and determine whether a Distribution should be approved.

(b) If the debt service schedule of the Note is not payable from Surplus Cash or Residual Receipts, from time to time during the fiscal year, upon Agency approval, the Borrower may take advances on its reasonably expected annual distribution for the fiscal year. Such advances shall only be taken if there are no undisputed accounts payable older than thirty (30) days and there are sufficient funds to pay anticipated Operating Expenses coming due within the next thirty (30) days. The amount distributed shall not, in the aggregate, exceed the amount of the reasonably expected annual Distribution for the fiscal year. Such advances shall be reconciled to the monthly financials and the Development Financial Report for the fiscal year and, to the extent they exceed the approved annual Distribution, shall be refunded to the Development Account upon immediate demand by the Agency.

(c) If any debt service payable to the Agency derives from Surplus Cash or Residual Receipts, the Borrower shall not be entitled to mid-year advances of Distributions as discussed in subsection (b). All Distributions shall be taken annually and only after the Agency's prior written approval.

(d) The Agency shall not unreasonably withhold its approval of a Distribution request. Notwithstanding the foregoing, the Agency shall not be required to approve Distributions to be made from borrowed funds, or to be made while there is any violation or default under the terms of this Agreement or any of the other Loan Documents.

(e) The proceeds of any unapproved Distribution, while retained, shall be held by the recipient as trustee for the Development and shall be immediately refunded to the Development upon demand. The recipient of an unapproved Distribution shall be obligated to pay interest thereon to the Development at the rate of the Note for the period that the Distribution is retained by the recipient.

14. Actions. The Borrower agrees to notify the Agency promptly in writing of any action or proceeding by or against the Development or by or against the Borrower with respect to the Development. No action or proceeding seeking the recovery of a sum in excess of \_\_\_\_\_ (\$\_\_\_\_\_) or for specific performance or other equitable relief shall be instituted by the Borrower with respect to the Development, nor shall any action or proceeding seeking the recovery from the Development, or from the Borrower with respect of the Development, of a sum in excess of

\_\_\_\_\_ (\$\_\_\_\_\_) or for specific performance or other equitable relief against the Development, or against the Borrower in respect of the Development, be settled or compromised by the Borrower, without the prior approval of the Agency. Any such approval may be subject to such terms and conditions as the Agency, in its sole discretion, may prescribe.

15. Assignment of Rents for Security. As security for the performance of the Borrower of all its obligations under this Agreement, the Borrower hereby assigns and pledges to the Agency all of the Borrower's right, title and interest in and to the rents, profits, income and charges of whatsoever kind or nature which it may receive or be entitled to receive from the operation of the Development, subject, however, to any assignment of rents or like provision contained in the Deed of Trust or in any of the other Loan Documents; provided, however, that unless and until a default under this Agreement is declared by the Agency or a default or event of default shall have occurred under any of the other Loan Documents, the Borrower shall be permitted to collect and retain such rents, profits, income and charges, subject to the provisions of this Agreement.

16. Violation of Agreement by the Borrower. In the event of the violation of any of the provisions of this Agreement by the Borrower, the Agency shall give written notice thereof to the Borrower by registered or certified mail addressed to the Borrower at the address stated in this Agreement, or to such other address as may have been designated by the Borrower in writing, and if such violation is not corrected to the satisfaction of the Agency within thirty (30) days after the date such notice is mailed (or within such further time as the Agency in its sole discretion may permit), the Agency may without further prior notice declare in writing a default under this Agreement effective on the date of such declaration of default, and upon any such declaration of default, or, irrespective of any such declaration of default, upon the occurrence of a default or event of default under any of the other Loan Documents, the Agency may:

(a) Declare the whole of the principal amount of the indebtedness evidenced by the Note immediately due and payable and proceed with the rights and remedies provided for in the Loan Documents.

(b) Collect all rents, profits, income and charges in connection with the operation of the Development and use same or the proceeds thereof, in such order as the Agency may determine, toward satisfaction of the Borrower's obligations under this Agreement or any of the Loan Documents; and toward payment of the necessary expenses of preserving and operating the Development.

(c) Take possession of the Development, bring any action necessary to enforce any rights of the Borrower growing out of the operation of the Development, and operate the Development in accordance with the terms of this Agreement until such time as the Agency, in its sole discretion, shall determine that the Borrower is again in a position to operate the Development in accordance with the terms of this Agreement and in compliance with the requirements of any of the other Loan Documents.

(d) Apply to any court, state or federal, for specific performance of this Agreement; for an injunction against any violation by the Borrower of this Agreement; for the appointment of a receiver to take over and operate the Development in accordance with the terms of this Agreement; or for such other relief as may be appropriate, it being agreed by the Borrower that the injury to the Agency arising from the default under any of the terms of this Agreement would be irreparable and that it would be extremely difficult to ascertain the amount of compensation to the Agency which would afford adequate relief.

(e) In addition, if and to the extent necessary to correct any such default, the Borrower hereby grants to the Agency the option to lease, from time to time, units in the Development for a rental of one dollar (\$1.00) per unit per year for the purpose of subleasing such units to comply with Sections 3 and 4 of this Agreement. Any rents received by the Agency under any such sublease shall be paid to the Borrower

after the Agency has been reimbursed for any expenses incurred in connection with such sublease, provided, that if the Borrower is in default under the Loan, such rental shall be used to make payments of Loan principal and interest or otherwise to cure such defaults.

17. Interest Charges. In the event that the Borrower fails to make timely payment of any money provided for in this Agreement, then such payment obligation shall be increased to include interest at the rate of the lesser of ten percent (10%) simple interest per annum or the maximum rate permitted by law.

18. Action by the Agency. Except as may be otherwise specifically provided herein, whenever any approval, notice direction, consent, request or other action by the Agency is required or permitted under this Agreement such approval, notice direction, consent, request or other action shall be in writing.

19. Integration and Amendments. The Loan Documents contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Loan Documents shall not be modified except by written instrument executed by all parties. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Agency in writing.

20. Severability. If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

21. Binding on Successors. This Agreement shall bind, and the benefits thereof shall inure to, the respective parties hereto, their legal representatives, executors, administrators, successors and assigns; provided, however, that the Borrower may not assign this Agreement or any of its obligations hereunder, voluntarily or by operation of law, without the prior approval of the Agency. In the event the Borrower transfers title, possession or control of the Development to a third party, the Borrower covenants to require as a condition of transfer that such third party agrees to be bound by and to operate the Development in accordance with this Agreement. The Agency is deemed to be the beneficiary of such conditions and agreements with the right to enforce them against any such third party.

22. Recordation. This Agreement shall be acknowledged by each of the parties and recorded in the official records of the county in which the Development is located.

23. Election of Remedies; Events of Default. The remedies of the Agency hereunder and under the other Loan Documents are cumulative, and the exercise of one or more of such remedies shall not be deemed an election of remedies and shall not preclude the exercise by the Agency of any one or more of its other remedies.

24. Waiver by Agency. No waiver by the Agency of any breach of or default under this Agreement shall be deemed to be a waiver of any other or subsequent breach thereof or default hereunder.

25. Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of California.

26. Legal Notices. Written notices pursuant to Section 16 of this Agreement by and between the parties hereto shall be addressed as follows unless and until a party hereto has, in writing, communicated a different address to the other party hereto, provided, for notices other than to Borrower, CalHFA shall use its best efforts, and provided further that no legal consequences shall arise by reason of CalHFA's failure to give notice to a person other than Borrower:



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Developer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Limited Partner \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Agency: Office of General Counsel  
California Housing Finance Agency  
P.O. Box 4034  
Sacramento, CA 95812-4034  
Attn: \_\_\_\_\_

27. Attorney Fees, Costs. In any nonjudicial foreclosure process, or action to enforce or relating to any provision of the Loan Documents, the prevailing party shall be entitled to recover from the other party, its costs and expenses. The term “costs and expenses” as used herein shall include all costs and expenses actually and reasonably incurred including but not limited to attorney's fees; filing, motion, and jury fees; juror food and lodging; taping, videotaping, and transcribing depositions and travel expenses to attend depositions; service of process by a public officer, registered process server, or other means; expenses of attachment including keeper's fees; premiums on surety bonds; ordinary witness fees pursuant to Section 68093 of the California Government Code; fees of expert witnesses whether or not ordered by the court; transcripts of court proceedings whether or not ordered by the court; court reporters fees as established by statute; investigation expenses in preparing the case for trial; postage, telephone, and photocopying charges; costs in investigation of jurors or in preparation for voir dire; models, blowups and photocopies of exhibits, and any other item that is required to be awarded to the prevailing party pursuant to statute as an incident to prevailing in the action at trial or on appeal. Such costs and expenses shall be recoverable whether the services were rendered by a salaried employee of the party or by an independent contractor.

28. No Conflict With Other Documents. The Borrower warrants that it has not, and shall not, execute any other agreement with provisions contradictory to the provisions hereof, and that, in any event, the requirements of this Agreement shall be paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.

29. Agency Insurance Requirements. The Borrower shall maintain insurance on the Development in substantial conformance with the requirements of the Agency as amended from time to time. As of the date of this Agreement, the Agency's requirements are set forth in those certain “Insurance Requirements For California Housing Finance Agency Developments” attached hereto as **Exhibits B-1** and **B-2** and incorporated herein by this reference.

30. Maintenance. The Borrower shall maintain the Development in a decent, safe and sanitary condition and in a good state of repair as determined by the Agency in its sole discretion.

31. Indemnification. The Borrower shall indemnify, defend (with counsel reasonably chosen by the Agency, at the Agency's option), and hold the Agency, and its employees, officers, agents, and board members harmless against all claims which arise out of or in connection with the ownership or occupancy of or construction on or in connection with the Development (including, without limitation, rehabilitation) by

the Borrower or the Borrower's contractors, subcontractors, agents, employees, or tenants. This section shall survive the termination of this Agreement.

32. Environmental Covenants. The Borrower represents and warrants that after reasonable investigation and inquiry, and except as indicated in the Phase I environmental report submitted to the Agency, as of the closing date it has no knowledge of any hazardous substance or environmental condition on or within two thousand (2,000) feet of the Development which may adversely impact the security of the Loan, or which may render the Development financially infeasible, or which may affect the health and safety of the occupants, the Development, or which may present an undue risk of liability to the Agency. The Borrower agrees to comply with all laws and orders of any federal, state or local governmental agency relating to clean-up or remediation, or other response action required by applicable law or order concerning a release or threatened release of hazardous substances in or on the Development. The term "hazardous substance" as used in this paragraph shall mean as defined at Code of Civil Procedure Section 736(f)(3).

The Borrower shall give any and all environmental notices to tenants and/or workers (both employee and independent contractor) which may be required by state or federal law. The Borrower hereby agrees to indemnify and hold the Agency harmless for any and all liability arising out of the presence of hazardous substances on the Development during the longer of the term of the Loan or the term of the Regulatory Agreement. Liability may be established by, among other forms of demands, a demand in the form of a judgment, a settlement, or an administrative order; and may include costs, fees, penalties, interest, attorneys fees, and other costs related thereto. Whereas the purpose of this indemnity is to protect the Agency from harm, the rights to recover shall accrue as soon as the liability is incurred or costs are advanced. The term "any and all liability" shall include, but shall not be limited to, liability for: (a) the clean-up of hazardous substances; (b) claims for contribution or apportionment of remedies, and; (c) claims for physical or other damages to persons, property, or natural resources. The duty of the Borrower to indemnify and hold the Agency harmless shall include the duty to defend as set forth in California Civil Code Section 2778.

33. CDLAC Requirements. The Borrower shall comply with the conditions set forth in Exhibit A to CDLAC Resolution No. \_\_\_\_ relating to the Project and adopted on \_\_\_\_\_ (the "***CDLAC Conditions***"), as they may be modified or amended from time-to-time, which conditions are incorporated herein by reference and made a part hereof. The Borrower will prepare and submit to CDLAC, not later than each anniversary of the Closing Date, until the end of the Qualified Project Period, a Certificate of Continuing Program Compliance, executed by an authorized representative of the Borrower. The Agency shall have no obligation to monitor the Borrower's compliance with the CDLAC Conditions.

34. Third-Party Beneficiary. The CDLAC is intended to be and shall be a third-party beneficiary of this Regulatory Agreement. CDLAC shall have the right (but not the obligation) to enforce the CDLAC Conditions and to pursue an action for specific performance or other available remedy at law or in equity, provided that any such action or remedy shall not materially adversely affect the interest and rights of the Bondholders or the Agency.

35. Counterparts. This Agreement may be executed in several counterparts, each of which will be an original and all of which constitute one and the same instrument.

36. 3 Year Tax Credit Period. If this Development was assisted by federal tax credits, and in the event that it is determined that IRS Code Section 42(h)(6)(E) (ii) is applicable to the Agency, and in the event that the Agency were to take over ownership of the Development as a result of a foreclosure, the Agency will comply with the 3 year extended use requirement as specified therein.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

**AGENCY**

**CALIFORNIA HOUSING FINANCE**

**AGENCY**, a public instrumentality and political subdivision of the State of California

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**DEVELOPER**

\_\_\_\_\_, a

California limited partnership

By \_\_\_\_\_, a

California nonprofit public benefit corporation, its general partner

By \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGEMENTS**

Exhibit A	Legal Description of the Development
Exhibits B-1 and B-2	Agency Insurance Requirements
Exhibit C	HUD/FHA Insurance Addendum (Risk Sharing)

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**EXHIBIT A**  
**LEGAL DESCRIPTION**

**EXHIBIT B-1**

**CALIFORNIA HOUSING FINANCE AGENCY**  
**INSURANCE REQUIREMENTS - CONSTRUCTION RISK**

Prior to construction loan closing, the Borrower shall procure and maintain, and provide proof of, all required insurance coverage during the term of the construction loan. Such insurance shall provide coverage against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Borrower, his agents, representatives, employees, contractors or subcontractors. All required evidence of insurance coverage must be in the form of a certificate of insurance and policy endorsements acceptable to the California Housing Finance Agency (“CalHFA”).

All insurance certificates must include the following:

- NAIC # for each insurer affording coverage
- Project Name
- Project Address
- Insurance Contact Information, including name and telephone number

The insurance information referenced above must be sent to CalHFA at the following address:

- CalHFA, Multifamily Programs
- P.O. Box 4034
- Sacramento, CA 95812

**Acceptability of Insurers**

Insurance must be placed with insurers with a current A.M. Best rating of no less than **A:VII**. In the event the insurer’s A.M. Best rate declines below an A:VII rating, Borrower is required to provide a replacement policy from another acceptable insurer within 10 business days.

**MINIMUM SCOPE OF INSURANCE AND MINIMUM LIMITS OF INSURANCE**

**Borrower’s Insurance Requirements**

Borrower’s insurance shall include all contractors as insureds under its policies or shall furnish separate certificates and endorsements for the general contractor to CalHFA for review and approval. Borrower shall have insurance coverage that shall be at least as broad as:

1. *Commercial General Liability Insurance* - Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).

General Liability: **\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately

to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Coverage for products and completed operations must remain in force for at least twelve (12) months following acceptance of the work by CALHFA.

CalHFA to be named as both additional insured and as a certificate holder.

2. *Owners and Contractors Protective Liability Insurance* - Insurance Services Office Form (G0009 11 88 Owners and Contractors Protective Liability Coverage Form - Coverage for Operations of Designated Contractor).

Employer's Liability: **\$1,000,000** per accident for bodily injury or disease.

CalHFA to be named as both additional insured and as a certificate holder.

3. *Automobile Liability Insurance* - Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). An entity without autos should have "non owned and hired" coverage.

Automobile Liability: **\$1,000,000** per accident for bodily injury and property damage. An entity without autos shall provide proof of "non owned and hired" coverage.

CalHFA to be named as both additional insured and as a certificate holder.

4. *Workers' Compensation Insurance* - Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

Workers' Compensation: Statutory Limits

Any entity without employees needs to provide written statement stating that they do not have any employees.

CalHFA to be named as a certificate holder.

5. *Course of Construction/Builder's Risk Insurance* - Course of Construction insurance covering all risks of loss less policy exclusions on the structure, materials on and offsite, and materials in transit. Course of Construction: Completed value of the project with no coinsurance penalty provisions.

Course of Construction/Builder's Risk Insurance must be provided on an "all risk" basis insuring the interests of CalHFA, the Borrower, contractors and material suppliers. The Borrower shall be responsible for any loss within the deductible amount of the insurance.

Course of Construction policies shall contain the following provisions:

- A. CalHFA shall be named as Loss Payee with a 438BFU endorsement provided.
- B. The insurer shall waive all rights of subrogation against CalHFA.
- C. A "Permit to Occupy" endorsement, or coverage, shall be included.

**Contractor's Insurance Requirements**

All coverages for general contractors shall be subject to all of the same requirements as the Borrower for the following insurance requirements:

1. *Commercial General Liability Insurance* - Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).

General Liability: **\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Coverage for products and completed operations must remain in force for at least twelve (12) months following acceptance of the work by CALHFA.

CalHFA to be named as both additional insured and as a certificate holder.

2. *Automobile Liability Insurance* - Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). An entity without autos should have “non owned and hired” coverage.

Automobile Liability: **\$1,000,000** per accident for bodily injury and property damage. An entity without autos shall provide proof of “non owned and hired” coverage.

CalHFA to be named as both additional insured and as a certificate holder.

3. *Workers' Compensation Insurance* - Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance. Workers' Compensation: Statutory Limits

Any entity without employees needs to provide written statement stating that they do not have any employees.

CalHFA to be named as a certificate holder.

**Architect, Engineer and Other Licensed Professionals Insurance Requirements**

All Architects, Engineers and other licensed professionals shall be registered to practice within the State of California. A California licensed Architect is required on all projects with 16 apartment units or more. For smaller developments, a licensed Engineer may be acceptable.

All coverages for Architects, Engineers and subcontractors shall provide:

1. *Errors & Omissions Insurance or Professional Liability Insurance* for no less than **\$1,000,000** per occurrence.

CalHFA to be named as both additional insured and as a certificate holder.

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2. *Commercial General Liability Insurance* - Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).

General Liability: **\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

Coverage for products and completed operations must remain in force for at least twelve (12) months following acceptance of the work by CALHFA.

CalHFA to be named as both additional insured and as a certificate holder.

3. *Automobile Liability Insurance* - Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto). An entity without autos should have “non owned and hired” coverage.

Automobile Liability: **\$1,000,000** per accident for bodily injury and property damage. An entity without autos shall provide proof of “non owned and hired” coverage.

CalHFA to be named as both additional insured and as a certificate holder.

4. *Workers’ Compensation Insurance* - Workers’ Compensation insurance as required by the State of California and Employer’s Liability Insurance. Workers’ Compensation: Statutory Limits

Any entity without employees needs to provide written statement stating that they do not have any employees.

CalHFA to be named as a certificate holder.

**Deductibles and Self-Insured Retentions**

Any deductibles in excess of \$5,000 must be declared and approved by CalHFA. In addition, the Borrower shall provide a financial guarantee satisfactory to CalHFA for the payment of any resulting losses and related investigations, claim administration and defense expenses.

**Verification of Coverage**

Borrower shall provide CalHFA with original certificates and amendatory endorsements for all required insurance coverage, in a form and substance acceptable to CalHFA prior to the closing of the construction loan and prior to the commencement of construction. CalHFA reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time. Such coverage will be required until the final retention payment is released.



### **Other Insurance Provisions**

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. CalHFA, its officers, officials, employees, and volunteers are to be covered as insureds with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Borrower; and with respect to liability arising out of work or operations performed by or on behalf of the Borrower including materials, parts or equipment furnished in connection with such work or operations.
2. For any claims related to this project, the Borrower's insurance coverage shall be primary insurance as respects CalHFA, its officers, officials, employees, and volunteers.
3. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to CalHFA.
4. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.

### **Railroad Protective Liability Insurance**

Any exclusion or reduction in coverage due to the project's location at or near a railroad must be removed, or the Borrower shall obtain a separate Railroad Protective Liability policy acceptable to CalHFA.

### **Pollution Legal Liability Insurance**

If Pollution Legal Liability coverage is required, Borrower shall obtain for the duration of the contract and for 24 months following acceptance by CalHFA, Pollution Legal Liability Insurance as respects services or operations under this agreement. Extended discovery period must be no less than 24 months.

### **Flood Coverage**

If CalHFA determines that Flood insurance is required, Borrower shall obtain such coverage for the duration of the contract in an amount equivalent to the lesser of:

- the completed value of the project,
- the maximum amount allowed for the property under the National Flood Insurance Program (NFIP), or
- the outstanding balance of the loan.

**EXHIBIT B-2**

**CALIFORNIA HOUSING FINANCE AGENCY**

**INSURANCE REQUIREMENTS – CONVERSION TO PERMANENT LOAN**

Owner shall procure and maintain for the duration of the loan, insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the owners operation of the premises to which this contract applies.

**Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. Property insurance against the perils of fire, “extended coverage”, vandalism, and malicious mischief to real property and business income (rents).
2. If not granted a waiver, Property insurance against the perils of earthquake and flood for both real property and business income (rents) (may be purchased through CalHFA).
3. Insurance Services Office Commercial General Liability coverage (occurrence Form CG 0001).
4. Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto).
5. Workers Compensation insurance as required by the State of California and Employer’s Liability Insurance.
6. Boiler and Machinery coverage against standard “broad form” perils.

**Minimum Limits of Insurance**

Owner shall maintain limits no less than:

1. Property Insurance: Full replacement cost with no coinsurance penalty provision for real property, and at least the annual gross potential rental income for the development for business interruption coverage.
2. General Liability: (Including operations, products and completed operations.) **\$1,000,000** per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

***DRAFT – DO NOT EXECUTE***

3. Automobile Liability: **\$1,000,000** per accident for bodily injury and property damage.
4. Employer’s Liability: **\$1,000,000** per accident for bodily injury or disease.
5. Earthquake and Flood:
  - (a) Limit as provided through participation in the earthquake and flood DIC policy coverage offered through the Agency, or.
  - (b) For new proposed projects, application to Multifamily Programs underwriting for a waiver.
  - (c) For projects not covered by the Agency policy or granted a waiver, total replacement value (building replacement cost plus business interruption value) with no coinsurance penalty provision.

Blanket earthquake insurance policies will be considered on a case by case basis.

6. Boiler & Machinery: **\$1,000,000**.

**Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by CalHFA. At the option of the CalHFA, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CalHFA, its officers, officials, employees and volunteers; or the owner shall provide a financial guarantee satisfactory to CalHFA guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

Notwithstanding the foregoing, the owner may select deductibles no greater than \$10,000 per occurrence on Property and Boiler & Machinery coverages, and no greater than 5% of the values per building per location at the time and place of the loss per occurrence on Earthquake and Flood coverages.

**Other Insurance Provisions**

With respect to Property and Earthquake and Flood coverage, the Agency’s interest shall be protected by a Lenders Loss Payable Endorsement naming the Agency as “Loss Payee.”

Crime Coverage: The Agency recommends, but does not require owner to carry insurance covering money or other property against burglary, robbery or theft.

Directors and Officers: The Agency recommends but does not require liability insurance for directors and officers of non-profit boards.

The general liability policy is to contain, or be endorsed to contain, the following provisions:

1. The owner's insurance coverage shall be primary insurance. Any insurance or self-insurance maintained by the Agency shall be excess of the owner's insurance and shall not contribute with it.
2. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled, reduced or modified except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the Agency.
3. The Agency, its officers, officials, and employees are to be covered as additional insureds with respect to liability arising out of ownership, maintenance or use of the premises.

**Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII or an S&P rating of AA.

**Verification of Coverage**

Policies must be acquired at initial occupancy and a certificate of insurance must be submitted to the Agency for approval 45 days prior to permanent loan recordation. Renewal insurance certificates must be submitted 30 days prior to the expiration date of any current certificate.

**Impounds**

At the time of permanent loan closing, the Agency will establish insurance impounds.

**ACKNOWLEDGMENTS**

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/ their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

STATE OF CALIFORNIA  
COUNTY OF \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_, a Notary Public, personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/ their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public